

DAVID N. KELLEY  
United States Attorney for the  
Southern District of New York  
Attorney for the United States of America  
By: DAVID S. JONES (DJ-5276)  
Assistant United States Attorney  
86 Chambers Street, 3<sup>rd</sup> Floor  
New York, New York 10007  
Tel. (212) 637-2739  
Fax (212) 637-2686

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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THE PRESBYTERIAN CHURCH OF SUDAN, :  
REV. JOHN SUDAN GADUEL, NUER :  
COMMUNITY DEVELOPMENT SERVICES IN :  
U.S.A., STEPHEN KUINA, FATUMA :  
NYAWANG GARBANG, and DANIEL WOUR :  
CLUOL, on behalf of all others similarly situated, :  
:  
Plaintiffs, : 01 Civ. 9882 (DLC)  
:  
- v. - :  
:  
TALISMAN ENERGY INC., REPUBLIC OF :  
THE SUDAN, :  
:  
Defendants. :  
-----X

STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA

The United States of America, by its attorney, David N. Kelley, United States Attorney for the Southern District of New York, respectfully submits this Statement of Interest pursuant to 28 U.S.C. § 517.<sup>1</sup> Specifically, by this submission the United States respectfully informs the Court (1) of concerns expressed by the United States Department of State as to the effect of the

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<sup>1</sup> “The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any . . . district in the United States . . . to attend to any [] interest of the United States.” 28 U.S.C. § 517.

above-referenced matter on this Nation's foreign affairs, especially in light of the Government's understanding that Canada's judiciary is equipped to consider claims such as those raised here; and (2) of concerns expressed by the Government of Canada about the exercise of extraterritorial jurisdiction by this Court over the Canadian defendant Talisman Energy Inc. in this matter, which the Government of Canada states, among other things, frustrates its policies vis a vis Sudan.

The views of the United States Department of State are set forth in a letter from U.S. Department of State Legal Adviser William H. Taft, IV, to the Honorable Daniel Meron, Principal Deputy Assistant Attorney General, Civil Division, U.S. Department of Justice, dated February 11, 2005, and annexed hereto as Exhibit A (along with that letter's enclosure, a diplomatic note from the Government of Canada to the United States Department of State dated January 14, 2005). As the Supreme Court has directed, it is appropriate for this Court to give these concerns great weight "as the considered judgment of the Executive on a particular question of foreign policy." Republic of Austria v. Altman, 124 S. Ct. 2240, 2255 (2004).

As the Supreme Court has noted, in cases, like this one, arising under the Alien Tort Statute ("ATS"), 28 U.S.C. § 1350, a court must act cautiously and "with a restrained conception of its discretion" in both recognizing ATS claims and in extending liability. Sosa v. Alvarez-Machain, 124 S. Ct. 2739, 2761-64, 2766 n.20 (2004). Thus, the Supreme Court has instructed federal courts to refrain from taking an "aggressive role in exercising a jurisdiction that remained largely in shadow for much of the prior two centuries," id. at 2762-63, and, in particular, has noted that "the potential implications for the foreign relations of the United States of recognizing such causes should make the Courts particularly wary of impinging on the discretion of the Legislative and Executive Branches in managing foreign affairs." Id. at 2763. The Court also

directed that federal courts consider the “practical consequences” of recognizing causes of action under the ATS; the Court also endorsed possible consideration of whether a claimant should be required to exhaust available remedies elsewhere before seeking relief in a United States federal district court. 124 S. Ct. 2766 & n. 21.

As noted in the State Department's letter, we understand that this suit raises the question, among other issues, of whether claims of “aider and abetter” liability may be brought under the ATS. Because we wish to provide the Court with the timeliest possible communication of the views of the State Department and the Government of Canada, we do not undertake a full briefing of “aider and abetter” liability herein. The United States has, however, recently briefed that issue in its “Supplemental Brief for the United States of America, as Amicus Curiae,” dated August 25, 2004, in the case John Doe I v. Unocal Corp., Nos. 00-56603, 00-56628 (9<sup>th</sup> Cir.). That brief, which relies primarily on statutory, regulatory, and Supreme Court authority that is fully applicable in this Court, is respectfully annexed hereto as Exhibit B for the Court's convenience and reference to the extent the Court finds it helpful.

Dated: New York, New York  
March 15, 2005

Respectfully submitted,

DAVID N. KELLEY  
United States Attorney  
Attorney for the United States of America

By:

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DAVID S. JONES (DJ-5276)  
Assistant United States Attorney  
86 Chambers Street, 3<sup>rd</sup> Floor  
New York, New York 10007  
Telephone: (212) 637-2739

Of Counsel:

DAVID P. STEWART  
Assistant Legal Adviser  
Office of Diplomatic Law and Litigation  
Office of the Legal Adviser  
United States Department of State  
2201 C Street, N.W.  
Washington, D.C. 20520

THE LEGAL ADVISER  
DEPARTMENT OF STATE  
WASHINGTON

February 11, 2005

Mr. Daniel Meron  
Principal Deputy Assistant Attorney General  
Civil Division  
U.S. Department of Justice  
950 Pennsylvania Ave., N.W., Room 3137  
Washington, D.C. 20530

Re: Presbyterian Church of Sudan v. Talisman Energy, Inc., No. 02 CIV. 9882 (DLC) S.D.N.Y.)

Dear Mr. Meron:

I write to bring to your attention a diplomatic note recently submitted to the Department of State by the government of Canada in connection with the above-captioned case and to request your assistance in transmitting a copy of that note, together with a copy of this letter, under cover of an appropriate Statement of Interest, to the District Court.

The above-captioned litigation is a class action brought by current and former residents of Sudan against a Canadian company, Talisman Energy ("Talisman"), and the Republic of the Sudan.<sup>1</sup> Plaintiffs allege serious human rights abuses related to or arising from Talisman's oil exploration and extraction activities in Sudan and the involvement of the government of the Sudan in those activities. Jurisdiction is premised on 28 U.S.C. §§ 1330, 1331 and 1350 (the Alien Tort Statute or "ATS") as well as "principles of universal jurisdiction." On August 27, 2004, District Judge Cote denied Talisman's motion to dismiss for lack of personal jurisdiction. Presbyterian Church of Sudan v. Talisman Energy, Inc., 2004 WL 1920978 (S.D.N.Y. 2004). A prior motion to dismiss was denied in March 2003 on a number of grounds. Presbyterian Church of Sudan v. Talisman Energy, Inc., 244 F.Supp.2d 289 (S.D.N.Y. 2003).

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<sup>1</sup> It is our understanding that the Republic of the Sudan has never appeared in this litigation.